

**A. Section 42 Qualified Contract Provisions & Policies**

When submitting information to the Indiana Housing and Community Development Authority concerning a Qualified Contract the following Section 42 Qualified Contract Provisions & Policies (“Policies”) must be addressed. As used herein, any capitalized term shall have the meaning as defined and set out in Section 42 of the Internal Revenue Code of 1986, as amended (“Code”) unless otherwise provided herein.

**B. Notification letter with required information submitted to IHCD**

The Owner of the Development requesting that the Indiana Housing and Community Development Authority (IHCD) find a Qualified Contract purchaser for the applicable Development must submit a notification letter (“Letter”) with the IHCD stating this interest. The Letter must be accompanied by the following required information:

1. A fully completed calculation of the Qualified Contract price, including completed Worksheets A – E and a detailed list of all assumptions utilized to calculate the Qualified Contract price. The assumptions used must be consistent with those included in these Policies. A certified public accountant, on behalf of the Development, must complete, review and approve the calculation.
2. A thorough narrative description of the Development, including a description of all amenities suitable for acquainting prospective purchasers with the Development.
3. A detailed set of color photographs (digital and hard copy) of the Development, including photographs of the interior and exterior of representative apartment units and buildings, and photographs of the Development grounds (no photocopies).
4. A description of all restrictions applicable to the Development and its operation.
5. A statement of Income and Expenses and Balance Sheets of the Development for the three (3) years prior to the submission of the Letter and a statement of income and expenses of the Development for the year to date of the submission of the Letter. The statements must fairly apprise a potential purchaser of the Development’s operating expenses, replacement reserves and escrows, debt service, gross receipts, net cash flow and debt service coverage ratio. A summary of existing debt including original loan balance, current loan balance, interest rate, name and contact information for lender, monthly principle and interest payments, amortization period, prepayment provisions and copies of existing mortgage and note.
6. A current and certified rent roll.
7. Occupancy history for the three (3) years prior to the submission of the Letter.

8. Any third party environmental reports, correspondence from governmental entities, and copies of any contracts that cannot be extinguished upon the sale of the Development.
9. A property condition report and property needs assessment.
10. Copies of the leases for the leased portions of the land or improvements.

The Letter and required information must be submitted before IHCDa will begin the Qualified Contract process. IHCDa will have one (1) year from the receipt of the Letter and required information to find a qualified purchaser for the Development, unless the owner agrees to a longer time period. All buildings within the Development must qualify before IHCDa will accept a Qualified Contract provision request. A Development may make only one (1) request for a Qualified Contract purchaser. IHCDa and its agents retain the right to request additional information as needed.

#### **C. Certified Public Accountant Review**

To help assess the credibility of the assumptions used in calculating the Qualified Contract price, the IHCDa will contract with a reputable independent certified public accountant to review the Qualified Contract price calculated by the Development's certified public accountant. The Development will be notified of any adjustments in the Qualified Contract price suggested or required following the IHCDa review.

#### **D. Property listed with multi-family broker**

IHCDa will contract with a reputable multi-family housing broker to review, appraise, list and market all Section 42 properties that have requested to utilize the Qualified Contract provisions and submitted all required information. In addition, if the property is determined to be feasible and practical for listing the Development must agree to list the property with the multi-family housing broker selected by IHCDa. The listing price of the property will be the calculated Qualified Contract price. The final sales price will be the amount agreed upon by the parties. Properties that do not close after a purchaser has been found who will pay the calculated Qualified Contract price will be considered by IHCDa to have forfeited their right to utilize the Qualified Contract provisions of Section 42 for that Development. If a property is determined not to be feasible or practical for listing by the multi-family broker the property will be released from its extended use commitment.

#### **E. Fees and cost**

Property owners agree to pay costs incurred for submitting the required information and all commissions and fees owed to the multi-family housing broker for listing properties including the cost of a third party appraisal. If a property is determined to be feasible for listing the owner will be required to submit the administration and marketing fees and appraisal cost to IHCDa. In addition IHCDa has established a Qualified Contract submittal fee of twenty-five dollars (\$25) per unit. This fee includes the costs of an IHCDa certified public accountant review and the initial multi-family



broker review to determine feasibility of sale. The fee structure for the multi-family housing broker is as follows:

**1. Administrative and marketing fees:**

- a. \$5,000.00 for a property with a value less than or equal to \$250,000.00.
- b. \$10,000.00 for a property with a total value in excess of \$250,000.00.

The fee provided for herein is intended as compensation and reimbursement for Broker's time and costs incurred in the marketing of the subject property. This fee is in addition to reimbursement for MIA appraisal services which multi-family broker has incurred with regard to the subject property.

**2. Sales Commissions**

At closing of the sale of a subject property, a brokerage commission, based upon the gross sales price of the property as follows:

<u>Gross Sales Price</u>	<u>Broker's Commission</u>
Under \$500,000.00	7% of GSP but not less than \$10,000.00
\$500,000.00 - \$2,000,000.00	6% of GSP
\$2,000,001.00 - \$4,000,000.00	5% of GSP
\$4,000,001.00 - \$7,000,000.00	4% of GSP
Over \$7,000,000.00	3% of GSP

The brokerage commission payable hereunder shall be reduced by the amount of the administrative and marketing fee previously paid to broker in regard to the subject property.

**F. Qualified Contract Price Calculation and Assumptions**

All calculations must follow the Code. All assumptions utilized must be, in the sole and absolute discretion of the IHCD, reasonable and customary. The following assumptions must be used when calculating the Qualified Contract Price using Worksheets A through E.

**Worksheet B – Adjusted Investor Equity:** May be included only if included in adjusted basis of the Development and required by the partnership agreement.

**Worksheet D – Cash Distributions:** For the purpose of these calculations, cash distributions include: Developer fees, Construction or Contractor fees, Asset manager fees, and any refinance proceeds from the inception through the initial 15-years of participation in the Section 42 Programs.



**G. Special Circumstance Criteria for Release of Extended Use Declarations for Post Year 15 Properties**

IHCDA will consider releasing all or a portion of the units under the Extended Use Declaration for Post Year 15 Properties if at least one of the following criteria are met to the satisfaction of IHCDA:

1. The economic viability of the Property is poor and cannot be maintained throughout the Extended Use period through its current rental structure.
2. Current rents are similar or approximately the same as Fair Market Rents for units of similar size and structure and will remain similar for the foreseeable future.
3. There is a low measurable impact to the affordable housing market in the area.

Approval for the release of an Extended Use Declaration is at the sole discretion of IHCDA and the Authority may require the submission of additional information to support any request for release.

Properties that have waived their Qualified Contract Provision in their Initial and/or Final Application may not request a Qualified Contract but are eligible to request a Special Circumstance release. Additionally, IHCDA will entertain modification to ensure the long term viability of the development.

**H. No Warranty**

Property owner agrees that the actions, determinations, decisions, or other rulings made by the IHCDA pursuant to this policy shall not be construed to be a representation or warranty by the IHCDA as to a Development's compliance with applicable legal requirements, the feasibility or viability of any Development, or any other matter. No action of the IHCDA shall be relied upon by any person as a representation or warranty by the IHCDA in connection therewith.

IHCDA reserves the right to resolve all conflicts, inconsistencies or ambiguities in these Policies, including those which may rise in administering, operating or managing the Qualified Contract Policies. The IHCDA in its sole discretion reserves the right to, and from time to time may, amend these Policies pursuant to the Code.

